

Carl D. Crowell, OSB No. 982049
email: carl@crowell-law.com
Drew P. Taylor, OSB No. 135974
email: drew@crowell-law.com
CROWELL LAW
P.O. Box 923
Salem, OR 97308
(503) 581-1240
Of attorneys for plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

COBBLER NEVADA, LLC,

Plaintiff,

v.

DOE-24.20.14.171,

Defendant.

Case No.: 6:15-cv-00911-ST

PLAINTIFF'S MOTION FOR LEAVE TO
ISSUE FRCP 45 SUBPOENA TO NON-
PARTY; EXHIBIT 1 (Proposed Subpoena)

EXPEDITED RULING REQUESTED

LR 7-1 Conferral

The relevant subscriber from whom discovery is sought is non-responsive to plaintiff's attempts to communicate and as such there has been no conferral on this motion.

PLAINTIFF'S MOTION FOR LEAVE TO ISSUE FRCP 45 SUBPOENA
TO NON-PARTY

Pursuant to Federal Rule of Civil Procedure 26 and 45, plaintiff moves the Court for an order permitting plaintiff to issue an FRCP 45 subpoena for the deposition of the non-party identified as responsible for the Internet protocol ("IP") address used by the Doe defendant to

infringe plaintiff's rights. Plaintiff believes the relevant deposition will take no more than two (2) hours.

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO ISSUE

FRCP 45 SUBPOENA TO NON-PARTY

1. Introduction

As outlined in plaintiff's complaint (Dkt. 1) and the prior motion to expedite discovery (Dkt. 3) plaintiff is seeking leave to identify the Doe defendant who used a specific IP address to infringe plaintiff's rights. As per the Complaint, the persistence of the activity associated with the IP address, which can be filed if requested, indicates the Doe defendant is a permissive user of the subscriber's Internet service and likely long-term resident of the household. Decl. ¶ 9-10.

In this case ISP Comcast has identified a singular subscriber that was assigned the IP address used by the Doe defendant. Decl. ¶ 3. However, the identified subscriber refuses to respond to communications or participate in any investigation or inquiry. Decl. ¶ 4-8. Independent investigations have identified the subscriber's residence as an apartment, but such research and efforts do not permit plaintiff to identify a specific party that is likely to be the infringer. As such, plaintiff is left with the options of proceeding against the subscriber as named by Comcast and possibly substituting another party on discovery, or seeking further discovery to ascertain the identity of the true Doe defendant prior to naming a party.

While the named subscriber is often the proper defendant, plaintiff wishes to ensure that investigations are complete and proper and submits that in this matter something beyond the mere identification of a subscriber by an ISP is proper before a defendant is named.

////

2. There is a demonstrated likelihood of plaintiff being able to identify an actual infringer with further discovery.

The record before this court is that when a party such as plaintiff has an IP address that permits further investigation, plaintiffs have successfully confirmed the identity of an infringing defendant the vast majority of the time. If the question before the court is whether or not plaintiff is “likely” to be able to identify the actual infringer, then based on the proven record the answer is a resounding “yes.” *Voltage, et al. v. Doe*, 3:14-cv-01872-AC (D. Or., April 9, 2015).

3. Conclusion

Plaintiff respectfully requests the Court grant its motion for leave to issue an FRCP 45 subpoena in the form filed herewith as Exhibit 1 to the non-party subscriber to depose the subscriber on matters related to the access and use of their Internet service by occupants of the residence.

Plaintiff requests an expedited ruling on this matter to avoid spoliation as the deletion and destruction of files may be occurring.

DATED: July 27, 2015.

Respectfully submitted,

s/ Drew P. Taylor

Carl D. Crowell, OSB No. 982049

email: carl@crowell-law.com

Drew P. Taylor, OSB No. 135974

email: drew@crowell-law.com

(503) 581-1240

Of attorneys for the plaintiff